

Final Draft 6/1/73
Revised 7/2/73

PUBLIC HEALTH REGULATIONS
DEPARTMENT OF HEALTH, STATE OF HAWAII
CHAPTER 37
WATER POLLUTION CONTROL

Under and by virtue of the provisions of Chapter 342, HRS, and the Federal Water Pollution Control Act Amendments, 1972 PL 92-500, and all other applicable laws, Chapter 37 of the Public Health Regulations, Department of Health, State of Hawaii, relating to Water Pollution Control, is hereby amended to read as follows:

Section 1. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this chapter:

(a) "Water Pollution" means

- (1) Such contamination, or alteration of the physical, chemical or biological properties, of any state waters, including change in temperature, taste, color, turbidity or odor of the waters, or

(2) Such discharge of any liquid, gaseous, solid, radioactive or other substance into state water, as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental or injurious to public health, safety or welfare, including harm, detriment or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, research and scientific uses of such waters:

- (b) "Wastes" means waste materials of any kind, whether treated or not, and whether animal, mineral or vegetable, and whether liquid, gaseous, radioactive or solid, including sewage and agricultural and industrial and thermal wastes, which cause any state waters to be reduced in quality below the standards applicable to the area as set out in Chapter 37-A of the Public Health Regulations, Department of Health, State of Hawaii.
- (c) "Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power and other equipment and their appurtenances.

(d) "State waters" means all

(1) rivers, streams, canals,

(2) ponds, lakes, reservoirs,

(3) bays, harbors, channels,

(4) lagoons,

(5) coastal and shorewaters, and

(6) groundwaters, whether private or public, natural or artificial,

which are situated within or bordering upon the state.

(e) "Person" means any individual, firm, association, organization, partnership

business trust, corporation, company, foundation or other institution or

entity, or governmental agency.

(f) "Director" means the Director of Health or his duly authorized agent.

(g) "Act" means the Federal Water Pollution Control Act, as amended

33 U.S.C. 1314, et seq.

(h) "Refuse Act" means section 13 of the River and Harbor Act of March 3, 1899

(i) "EPA" means the U.S. Environmental Protection Agency.

(j) "Administrator" means the Administrator of the U.S. Environmental
Protection Agency.

(k) "Regional Administrator" means the EPA Regional Administrator of
Region IX.

(l) "National Pollutant Discharge Elimination System (NPDES)" means the
national system for the issuance of permits under section 402 of the
Act and includes any state or interstate program which has been approved
by the Administrator, in whole or in part, pursuant to section 402 of
the Act.

- (m) "NPDES application" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the Act) for application for an NPDES permit.
- (n) "NPDES reporting form" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the Act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.
- (o) "NPDES permit" means any permit or equivalent document or requirements issued by the director after enactment of the Federal Water Pollution Control Amendments of 1972, to regulate the discharge of pollutants pursuant to section 402 of the Act and Chapter 342, HRS.
- (p) "NPDES form" means any issued NPDES permit and any uniform national form developed for use in the NPDES and prescribed in regulations promulgated by the administrator, including the Refuse Act application, the NPDES application and the NPDES reporting forms.
- (q) "Refuse Act application" means the application for a permit under the Refuse Act.

(r) "Refuse Act permit" means any permit issued under the Refuse Act.

(s) The definitions of the following terms contained in section 502 of the

Act shall be applicable to such terms as used in this part unless the

context otherwise requires: "municipality," "pollutant," "navigable

waters," "territorial seas," "contiguous zone," "ocean," "effluent

limitations," "discharge of a pollutant," "toxic pollutant," "point

source," "biological monitoring," "discharge," "schedule of compliance,"

"industrial user," and "pollution."

(t) "National data bank" means a facility or system established or to be

established by the administrator for the purposes of assembling,

organizing, and analyzing data pertaining to water quality and the

discharge of pollutants.

(u) "Applicable water quality standards" means all water quality standards to

which a discharge is subject under the Act and which have been

(1) approved or permitted to remain in effect by the administrator

pursuant to section 303(a) or 303(c) of the Act, or (2) promulgated by

the administrator pursuant to section 303(b) of the Act.

(v) "Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(w) "Minor discharge" means any discharge which (1) has a total volume of less than 50,000 gallons on every day of the year, (2) does not affect the waters of any other state and (3) is not identified by the director, the regional administrator or by the administrator in regulations issued pursuant to section 307(a) of the Act as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a "minor discharge" as defined herein.

Section 2. GENERAL POLICY OF WATER QUALITY STANDARDS

It is the public policy of this state to conserve the waters of the state, and to protect, maintain and improve the quality thereof for drinking water supply

and food processing, for the growth, support and propagation of shellfish, fish and other desirable species of marine and aquatic life, for oceanographic research, for the conservation of coral reefs and wilderness areas, and for domestic, agricultural, industrial, recreational and other legitimate uses; and to provide that no waste be discharged into any waters of this state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; and to provide for the prevention, abatement and control of new and existing water pollution; and to cooperate with the federal government in carrying out these objectives.

Therefore, waters whose qualities are higher than established water quality standards shall not be lowered in quality unless it has been affirmatively demonstrated to the director that such change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, such waters. Any industrial, public or private project or development which could constitute a new source of pollution or an increased source of pollution will be required, as part of the initial project design to provide the highest and best degree of waste treatment practicable under

existing technology. In implementing the policy of this paragraph as it relates

to waters under federal jurisdiction, the administrator of the Environmental

Protection Agency will be kept advised and provided with such information as he

will need from time to time to protect the interests of the United States and the

authority of the administrator in maintaining high quality of interstate waters.

Standards of water quality, or any modification thereof, shall become effective

upon their adoption by the director in accordance with the requirements of the Hawaii

Administrative Procedure Act. Such standards shall remain in effect until amended

or repealed by the director.

Section 3 . APPLICATION FOR NPDES PERMIT

Every applicant for an NPDES permit must comply with NPDES filing requirements. Procedures and requirements include the following:

(a) Any person discharging pollutants must:

(1) Have filed a complete Refuse Act application; or,

(2) File a complete NPDES application no later than 60 days following

receipt by the applicant of notice from the Director that the

applicant's previously filed Refuse Act application is so deficient

as not to have satisfied the filing requirements; or,

(3) File a complete NPDES application within a stated period, not to

exceed any applicable periods specified in Federal regulations for

persons filing under the NPDES.

(b) Any person wishing to commence discharges of pollutants

after the applicable period in paragraph (a) of this section, must

file a complete NPDES application either (1) no less than 180 days in

advance of the date on which it is desired to commence the discharge of

pollutants, or (2) in sufficient time prior to the commencement of the

discharge of pollutants to insure compliance with the requirements of section 306 of the Act, or with any applicable zoning or siting requirements established pursuant to section 208(b) (2) (C) of the Act, and any other applicable water quality standards and applicable effluent standards and limitations.

- (c) Application for NPDES permits shall be made by the applicant on an NPDES application furnished by the director and shall be accompanied by two copies of complete data, siting information, plan description, specifications, drawings, and other detailed information necessary to determine in what manner the new or existing treatment works or wastes outlet will be constructed or modified, operated and controlled.
- (d) The director may require the submission of additional information after a Refuse Act or an NPDES application has been filed, and may insure that, if a Refuse Act or NPDES application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

(e) Filing fee. Every applicant for an NPDES permit shall pay a filing fee of \$100. This filing fee shall be submitted with the NPDES application and shall not be refunded nor applied to any subsequent NPDES application following final action of denial of an NPDES application.

(1) Where an NPDES application is filed for an NPDES permit for a substantial alteration or addition to a treatment works or waste outlet and where an NPDES permit had previously been granted for such treatment works or waste outlet, the applicant shall be assessed the fee of \$100.

(2) Where an application is filed for an NPDES permit by reason of transfer from one person to another, and no alteration, addition, or trans^{fer} of location has been made, the applicant shall pay only a \$5.00 fee which shall be submitted with the NPDES application.

(3) Where the NPDES application is filed for an NPDES permit by reason of transfer from one permanent location to another permanent location, and there has been no alteration or addition to the treatment works or waste outlet and no change of ownership, the applicant shall pay the \$100 filing fee which shall be submitted with the NPDES application.

- (4) A request for a duplicate NPDES permit shall be made in writing to the director within 10 days after the destruction, loss, or defacement of an NPDES permit. A fee of \$1.00 shall be charged and submitted with the request.
- (5) Fees shall be made payable to the State of Hawaii.
- (6) Exemptions. Any federal, state, or county government agency shall be exempt from paying all fees as prescribed herein.

Section 4. GENERAL PROHIBITION

No person, including any public body, shall use any State waters for the disposal of waste, engage in activity which causes State waters to become polluted, or violate any water quality permit or term or condition thereof without first securing approval in writing from the director.

No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, system, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the director.

Section 5 . RECEIPT AND USE OF FEDERAL DATA

The director shall receive any relevant data collected by the regional administrator prior to participation in the NPDES in such manner as the director and the regional administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (a) Prompt transmittal to the director from the regional administrator of copies of any Refuse Act applications, NPDES applications, or other relevant data collected by the regional administrator prior to the State or interstate agency's participation in the NPDES; and
- (b) A procedure to insure that the director will not issue an NPDES permit on the basis of any Refuse Act or NPDES application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director receives information sufficient to correct the deficiency to the satisfaction of the regional administrator.

Section 6 . TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

The director shall transmit to the regional administrator copies of NPDES

forms received by the State in such manner as the director and regional administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (a) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (b) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES form received by the State;
- (c) Procedures for acting on the regional administrator's written waiver, if any, of his rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof and,
- (d) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES application or reporting form received by him and to have such deficiency corrected. If the regional administrator's objection relates to an NPDES application, the director shall send the

regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the NPDES permit until he receives notice from the regional administrator that the deficiency has been corrected.

- (e) An opportunity for the regional administrator to identify any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge. If the regional administrator so identifies a discharge and notifies the director, the director shall require the applicant for such discharge to submit additional NPDES application forms or any other information requested by the regional administrator in his notification to the director.
- (f) Procedures for the transmittal, if requested by the regional administrator, of copies of notice received by the director from publicly owned treatment works pursuant to (d) and (e).

Section 7. IDENTITY OF SIGNATORIES TO NPDES FORMS

The director shall require that any NPDES form submitted to the director be signed as follows:

- (a) In the case of corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.
- (b) In the case of a partnership, by a general partner.
- (c) In the case of a sole proprietorship, by the proprietor.
- (d) In the case of a municipal, State, or other public facility, by either a principal executive officer, ranking elected official or other duly authorized employee.

Section 8 . FORMULATION OF TENTATIVE DETERMINATIONS AND DRAFT NPDES PERMIT

- (a) The director shall formulate and prepare tentative staff determinations with respect to a Refuse Act or NPDES application in advance of public notice of the proposed issuance or denial of an NPDES permit. Such tentative determinations shall include at least the following:
 - (1) A proposed determination to issue or deny an NPDES permit for the discharge described in the Refuse Act or NPDES application; and,
 - (2) If the determination proposed in paragraph (a) of this section is to

issue the NPDES permit, the following additional tentative

determinations:

(i) Proposed effluent limitations, identified pursuant to

Section 19 and Section 20 for those pollutants proposed to be

limited;

(ii) A proposed schedule of compliance, if required, including interim

dates and requirements, for meeting the proposed effluent

limitations, identified pursuant to Section 21; and

(iii) A brief description of any other proposed special conditions

(other than those required in Section 22 which will have a

significant impact upon the discharge described in the NPDES

application.

(b) The director shall organize the tentative determinations prepared pursuant

to paragraph (a) of this section into a draft NPDES permit for the Refuse

Act or NPDES application.

Section 9. PUBLIC NOTICE

(a) Public notice of every complete application for an NPDES permit shall be

circulated in a manner designed to inform interested and potentially

interested persons of the proposed discharge and of the proposed determination to issue or deny an NPDES permit for the proposed discharge.

Procedures for the circulation of public notice shall include at least the following:

(1) Notice shall be circulated within the geographical areas of the proposed discharge; such circulation may include any or all of the following:

(i) Posting in the post office and public places of the municipality

nearest the premises of the applicant in which the effluent source is located;

(ii) Posting near the entrance to the applicant's premises and in nearby places; and

(iii) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;

(2) Notice shall be mailed to any person or group upon request; and

(3) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all NPDES applications

within the State or within a certain geographical area.

- (b) The director shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES application. All written comments submitted during the 30-day comment period shall be retained by the director and considered in the formulation of his final determinations with respect to the NPDES application. The period for comment may be extended at the discretion of the director.

- (c) The contents of public notice of applications for NPDES permits shall include at least the following:

- (1) Name, address, phone number of agency issuing the public notice;
- (2) Name and address of each applicant;
- (3) Brief description of each applicant's activities or operations which result in the discharge described in the NPDES application (e.g., municipal waste treatment plant, raw sugar factory, pineapple cannery)

- (4) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
- (6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph (b) of this section and any other means by which interested persons may influence or comment upon those determinations; and
- (7) Address and phone number of State or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to Section 8(b), request a copy of the fact sheet described in Section 10 and inspect and copy NPDES forms and related documents.

Section 10 . FACT SHEET

- (a) For every discharge which has a total volume of more than 500,000 gallons on any day of the year, the director shall prepare and, following public

notice, shall send, upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:

(1) A sketch or detailed description of the location of the discharge described in the NPDES application;

(2) A quantitative description of the discharge described in the NPDES application which includes at least the following:

(i) The rate or frequency of the proposed discharge; if the discharge

is continuous, the average daily flow in gallons per day or

million gallons per day;

(ii) For thermal discharges subject to limitation under the Act, the

average summer and winter temperatures in degrees Fahrenheit; and

(iii) The average daily discharge in pounds per day of any pollutants

which are present in significant quantities or which are subject

to limitations or prohibition under sections 301, 302, 306, or

307 of the Act and regulations published thereunder;

(3) The tentative determinations required under Section 8;

(4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge; and

(5) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(i) The 30-day comment period required by Section 9 (b);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate in the formulation of the final determinations.

(b) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

Section 11 NOTICE TO OTHER GOVERNMENT AGENCIES

The director shall notify other appropriate government agencies of each complete application for an NPDES permit and shall provide such agencies an opportunity to submit their written views and recommendations. Procedures for such notification include the following:

(a) At the time of issuance of public notice pursuant to Section 9 transmission of a fact sheet to the appropriate district engineer of the Army Corps of Engineers of NPDES applications for discharges (other than minor discharges into navigable waters:

- (1) The director and the district engineer for each corps of engineers district within the State or interested area may arrange for (i) notice to the district engineer of minor discharges, (ii) waiver by the district engineer of his right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof and (iii) any procedures for the transmission of forms, period for comment by the district engineer (e.g., 30 days), and for objections of the district engineer.

- (2) A copy of any written agreement between the director and a district

engineer shall be forwarded to the regional administrator and shall be

made available to the public for inspection and copying.

- (b) A procedure for mailing copies of public notice (or upon specific request, copies of fact sheets) for application for NPDES permits to any other federal, State, or local agency, or any affected country, upon request, and providing such agencies an opportunity to respond, comment, or request a public hearing. Such agencies shall include at least the following:
- (1) The agency responsible for the preparation of an approved plan pursuant to section 208(b) of the Act; and
 - (2) The State agency responsible for the preparation of a plan pursuant to an approved continuous planning process under section 303(e) of the Act, unless such agency is under the supervision of the director.
- (c) Procedures for notice to and coordination with appropriate public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

Section 12. PUBLIC ACCESS TO INFORMATION

- (a) The director shall insure that any NPDES forms (including the draft NPDES permit prepared pursuant to Section 8(b)) or any public comment upon those forms pursuant to Section 9(b) shall be available to the public for inspection and copying during established office hours. The director, in his discretion, may also make available to the public any other records, reports, plans, or information obtained by the State agency pursuant to its participation in the NPDES.
- (b) The director shall protect any information (other than effluent data) contained in such NPDES form, or other records, reports, or plans as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward such information to the regional administrator for his consideration in any determination of confidentiality. If the regional administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he shall request advice from the Office of

General Counsel, stating the reasons for his disagreement with the determination of the director. The regional administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The general counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he shall consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the regional administrator. If the general counsel determines that the information being considered does not contain trade secrets, he shall so advise the regional administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the regional administrator shall communicate to the director his decision not to concur in the withholding of such information, and the director and the regional administrator shall then make available to the public, upon request, that information determined not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in a

General Counsel, stating the reasons for his disagreement with the determination of the director. The regional administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The general counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he shall consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the regional administrator. If the general counsel determines that the information being considered does not contain trade secrets, he shall so advise the regional administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the regional administrator shall communicate to the director his decision not to concur in the withholding of such information, and the director and the regional administrator shall then make available to the public, upon request, that information determined not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in a

NPDES form, shall be disclosed, upon request, to the regional administrator or his authorized representative, who shall maintain the disclosed information as confidential.

- (d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall insure that State employees honor requests for such inspection with due regard for the dispatch of other public duties. The director shall either (1) insure that a machine or device for the copying of papers and documents is available for a reasonable fee, or (2) otherwise provide for or coordinate with copying facilities or services such that requests for copies of nonconfidential documents may be honored promptly.

Section 13. PUBLIC HEARINGS

The director shall provide an opportunity for the applicant, the regional administrator, or any interest agency, person, or group of persons to request or petition for a public hearing with respect to NPDES applications. Any such request or petition for public hearing shall be filed within the 30-day period prescribed in Section 9(b) and shall indicate the interest of the party filing such request and the reasons why a hearing

is warranted. The director shall hold a hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the director, and may, as appropriate, consider related groups of NPDES permit applications.

Section 14 . PUBLIC NOTICE OF PUBLIC HEARINGS

- (a) Public notice of any hearing held pursuant to Section 13 above shall be circulated at least as widely as was the notice of the NPDES application.

Procedures for the circulation of public notice for hearings held under

Section 13 shall include at least the following:

- (1) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;
- (2) Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application;

(3) Notice shall be mailed to any person or group upon prior request; and

(4) Notice shall be effected pursuant to subparagraphs (1) and (3) of this

paragraph at least thirty (30) days in advance of the hearing.

(b) The contents of public notice of any hearing held pursuant to Section 13

shall include at least the following notice which meets the requirements

of this section:

(1) Name, address, and phone number of agency holding the public hearing;

(2) Name and address of each NPDES applicant whose application will be

considered at the hearing;

(3) Name of waterway to which each discharge is made and a short

description of the location of each discharge on the waterway;

(4) A brief reference to the public notice issued for each NPDES application

including identification number and date of issuance;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the persons requesting the

hearing;

(8) Address and phone number of premises at which interested persons

may obtain further information, request a copy of each draft NPDES

permit prepared pursuant to Section 8(b) above, request a copy of

each fact sheet prepared pursuant to Section 9 and inspect and copy

NPDES forms and related documents; and,

(9) A brief description of the nature of the hearing, including the

rules and procedures to be followed.

Section 15. ISSUANCE OF NPDES PERMIT

The director may issue an NPDES permit for any period not exceeding five years, and may renew a permit for any additional periods not exceeding five years. Upon

expiration of the date specified in the NPDES permit, the NPDES permit shall

automatically terminate and the permittee shall be divested of all rights therein.

(a) Approval. The director shall approve an NPDES application for a NPDES

permit if the applicant can show to the satisfaction of the director that:

(1) The existing treatment works or waste outlet is designed, built,

and equipped in accordance with the best practicable control

technology so as to eliminate or reduce wastes to a minimum. New

treatment works or waste outlet are designed in compliance with the

National Standards of Performance pursuant to Section 306 of the Act.

(2) The new or existing treatment works or waste outlet is designed

and will be constructed or modified to operate without causing a

violation of applicable rules and regulations.

(3) The new or existing treating works or waste outlet will not endanger

the maintenance or attainment of applicable water quality standards.

(4) A schedule of implementing actions will be followed in order to

comply with applicable water quality standards and established

effluent limitations.

(b) Conditional Approval: Conditions of approval for an NPDES Permit may

include:

(1) Requirement that the applicant provide such facilities as are

necessary for monitoring of the authorized waste discharge into State

waters and the effects of such wastes on the receiving waters.

The program for water and effluent quality monitoring shall be in

accordance with Section 26 through 31.

(2) Requirements which will bring the operation of any new or existing

wastes sources described in the application within the conditions

of Paragraph "a" of this Section.

(3) Compliance with any application of effluent standards and limitations,

water quality standards, and other requirements by the director

pursuant to Sections 19, 20 and 22.

(c) Denial. (1) In acting upon an NPDES application for an NPDES permit the

director may deny an NPDES application if the information submitted shows

that the new or existing treatment works or waste outlet described in

the NPDES application cannot conditionally, or otherwise, meet the

conditions of Paragraph "a" of this Section.

(2) No NPDES permit shall be issued authorizing any of the following

discharges:

(a) The discharge of any radiological, chemical, or biological

warfare agent or high-level radioactive waste into navigable water

(b) Any discharge which the secretary of the Army acting through the

chief of engineers finds would substantially impair anchorage

and navigation;

(c) Any discharge to which the regional administrator has objected

in writing pursuant to any right to object provided the

administrator in section 402(d) of the Act; and

(d) Any discharge from a point source which is in conflict with a

plan or amendment thereto approved pursuant to section 208(b)

of the Act.

Section 16. REVOCATION, SUSPENSION, MODIFICATION OR REVISION OF NPDES PERMIT

(a) Each NPDES permit shall be subject to revocation, to suspension, to

modification or revision by the director if he shall determine that:

(1) There is a violation of any condition of the NPDES permit, or

(2) The NPDES permit was obtained by misrepresentation, or failure to

disclose fully all relevant facts, or

(3) The NPDES permit was willfully defaced, altered, forged, counterfeited,

or falsified, or

(4) There is a change in any condition that requires either a

temporary or permanent reduction or elimination of the permitted

discharge, or

(5) There is a violation of a rule or regulation of the Department of

Health, or

(6) Such is in the public interest.

(b) In taking such action the director may consider operation records,

investigation or other information regarding the treatment works, outlets

or quality of effluent and/or receiving waters. Such action shall be

effected by giving written notice to the permittee, which notice shall contain the reasons for the action.

(c) No NPDES permit shall be revoked, suspended, modified, or revised unless the permittee has had an opportunity for a hearing by the director.

(d) Suspension or revocation of an NPDES permit shall become final 10 days after service of notice on the holder of the NPDES permit. An NPDES permit which has been revoked shall be surrendered forthwith to the director and all fees shall be forfeited.

Section 17. NPDES PERMIT NON-TRANSFERABLE

An NPDES permit shall not be transferable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

Section 18. REPORTING DISCONTINUANCE OR DISMANTLEMENT

It shall be required of that person to which the NPDES permit was issued to report to the director within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued. The NPDES permit shall then be surrendered forthwith to the director.

Section 19. APPLICATION OF EFFLUENT STANDARDS AND LIMITATIONS, WATER QUALITY
STANDARDS, AND OTHER REQUIREMENTS

(a) Whenever applicable NPDES permits shall be subject to the following

condition whether or not expressly stated therein:

- (1) Effluent limitations under sections 301 and 302 of the Act;
- (2) Standards of performance for new sources under section 306 of the Act;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under section 307 of the Act;
- (4) Any more stringent limitation, including those (i) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 510) , or (ii) necessary to meet any other Federal law or regulation, or (iii) required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Act and any regulations and guidelines issued pursuant thereto;

(5) Any more stringent legally applicable requirements necessary to
comply with a plan approved pursuant to section 208(b) of the
Act; and

(6) Prior to promulgation by the administrator of applicable effluent
standards and limitations pursuant to sections 301, 302, 306, and
307, such conditions as the director determines are necessary to
carry out the provisions of the Act.

(7) If the NPDES permit is for the discharge of pollutants into the
navigable waters from a vessel or other floating craft, any
applicable regulations promulgated by the Secretary of the department
in which the Coast Guard is operating, establishing specifications
for safe transportation, handling, carriage, storage, and stowage
of pollutants.

(b) In any case where an issued NPDES permit applies the effluent standards and
limitations described in sub-paragraphs (1), (2), and (3) of paragraphs
(a) of this section, the director must state that the discharge authorized
by the permit will not violate applicable water quality standards and must

have prepared some explicit verification of that statement. In any case where an issued NPDES permit applied any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

Section 20. EFFLUENT LIMITATIONS IN ISSUED NPDES PERMITS.

In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements pursuant to section 19, the director shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director may, in his discretion, in addition to the specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits.

Section 21. SCHEDULE OF COMPLIANCE IN ISSUED NPDES PERMITS

In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to

section 19 the director shall follow the following procedures in setting schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements:

(a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 19(d) and (e) the permittee shall be required to take specific steps to achieve compliance with the following:

(1) In accordance with any legally applicable schedule of compliance contained in:

- (i) Applicable effluent standards and limitations;
- (ii) If more stringent, water quality standards; or,
- (iii) If more stringent, legally applicable requirements listed in section 19(d) and (e); or,

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

- (b) In any case where the period of time for compliance specified in paragraph (a) of this section exceed nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility is more than nine months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.
- (c) Either before or up to fourteen (14) days following each interim date and the final date of compliance the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(d) On the last day of the months of February, May, August, and November, the

director shall transmit to the regional administrator a list of all

instances, as of 30 days prior to the date of such report, of failure

or refusal of a permittee to comply with an interim or final requirement

or to notify the director of compliance or noncompliance with each

interim or final requirement (as required pursuant to paragraph (b) of

this section). Such list shall be available to the public for inspection

and copying and shall contain at least the following information with

respect to each instance of noncompliance:

- (1) Name and address of each noncomplying permittee;
- (2) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, 2 week delay in commencement of construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc);
- (3) A short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency.)

(e) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation of the permit for which the director may modify, suspend, revise or revoke the permit or take direct enforcement action.

Section 22. OTHER TERMS AND CONDITIONS OF ISSUED NPDES PERMITS

In addition to the requirements previously specified, each issued NPDES permit shall be subject to the following terms and conditions whether or not previously stated therein:

(a) That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent

limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharges of pollutants; that the discharge of any pollutants more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

(b) That the permittee shall permit the director or his authorized representative upon the presentation of his credentials:

(1) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(2) To have access to and copy any records required to be kept under terms and conditions of the NPDES permit;

(3) To inspect any monitoring equipment or method required in the permit; or

(4) To sample any discharge of pollutants.

(c) That, if the NPDES permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the director of the following:

(1) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the Act if such source were discharging pollutants;

(2) Except as to such categories and classes of point sources or discharges specified by the director, any new introduction of pollutants into such treatment works from a source which would be subject to section 301 of the Act if such source were discharging pollutants;

and,

(3) Any substantial change in volume or character of pollutants being

introduced into such treatment works by a source introducing

pollutants into such works at the time of issuance of the permit.

Such notice shall include information on (i) the quality and quantity of effluent

to be introduced into such treatment works and (ii) any anticipated impact of such

change in the quantity or quality of effluent to be discharged from such publicly

owned treatment works.

(d) That, if the NPDES permit is for discharge from a publicly owned treatment work

the permittee shall require any industrial user of such treatment works to

comply with the requirements of sections 204(b), 307, and 308 of the

Act. As a means of insuring such compliance, the permittee shall require

of each industrial user subject to the requirements of section 307 of the

Act and shall forward a copy of the director periodic notice (over

intervals not to exceed nine months) of progress towards full compliance

with section 307 requirements.

(e) That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit.

(f) That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standards or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

Section 23. TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMITS

The Director shall transmit to the Regional Administrator copies of NPDES permits proposed to be issued by such agency in such manner as the Director and Regional Administrator shall agree upon. Any agreement between the State and the Regional Administrator shall provide for at least the following:

- (a) Except as waived pursuant to paragraph (d) of this section, the transmission by the Director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;
- (b) A period of time (up to 90 days) in which the Regional Administrator, pursuant to any right to object provided in section 402(d) (2) of the Act, may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (c) Procedures for State acceptance or rejection of a written objection by the Regional Administrator; and
- (d) Any written waiver by the Regional Administrator of his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources.

Section 24. TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS

The Director shall transmit to the Regional Administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of such NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.

Section 25. REISSUANCE OF NPDES PERMITS

(a) The Director shall maintain procedures for the review of applications for reissuance of NPDES permits. The Director shall notify the permittee that any permittee who wishes to continue to discharge after the expiration date of his NPDES permit must file for reissuance of his permit at least 180 days prior to its expiration.

(b) The scope and manner of any review of an application for reissuance of an NPDES permit shall be within the discretion of the Director but shall be sufficiently detailed as to insure the following:

(1) That the permittee is in compliance with or has substantially complied

with all the terms, conditions, requirements, and schedules of compliance of the expired NPDES permit;

- (2) That the Director has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports submitted to the Director by the permittee; and,
- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

- (c) The Director shall follow the notice and public participation procedures specified in this Chapter in connection with each request for reissuance of an NPDES permit.

- (d) Notwithstanding any other provision in this part, any point source the construction of which is commenced after the date of enactment of the

Federal Water Pollution Control Act Amendments of 1972 and which is so

constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

Section 26. MONITORING

- (a) Any discharge authorized by an NPDES permit may be subject to such monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).
- (b) Any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the regional administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the administrator pursuant to section 307(a) of the Act, shall be monitored by the permittee for at least the following:
- (i) Flow (in gallons per day); and,
 - (ii) All of the following pollutants:
 - (a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;

(b) Pollutants which the director finds, on the basis of information

available to him, could have a significant impact on the quality

of navigable waters;

(c) Pollutants specified by the administrator, in regulations issued

pursuant to the Act, as subject to monitoring; and

(d) Any pollutants in addition to the above which the regional

administrator requests, in writing, be monitored.

(e) Each effluent flow or pollutant required to be monitored pursuant to

paragraph (b) of this section shall be monitored at intervals sufficiently

frequent to yield data which reasonably characterizes the nature of the

discharge of the monitored effluent flow or pollutant. Viable effluent

flows and pollutant levels may be monitored at more frequent intervals

than relatively constant effluent flows and pollutant levels which may be

monitored at less frequent intervals.

Section 27. RECORDING OF MONITORING ACTIVITIES AND RESULTS

The following shall be the recording requirements for any NPDES permit

which requires monitoring of the authorized discharge:

- (a) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his NPDES permit;
- (b) Any records of monitoring activities and results shall include for all samples: (1) The date, exact place, and time of sampling; (2) the dates analyses were performed; (3) who performed the analyses; (4) the analytical techniques/methods used; and (5) the results of such analyses; and,
- (c) The permittee shall be required to retain for a minimum of three years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator.

Section 28. REPORTING OF MONITORING RESULTS

The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES reporting forms of monitoring results obtained by a permittee pursuant to monitoring requirements in an NPDES permit. In addition to the NPDES reporting forms, the director in his discretion may require submission of such other information regarding monitoring results as he determines to be necessary.

Section 29. NPDES MONITORING, RECORDING, AND REPORTING REQUIREMENTS

The director shall adopt procedures consistent with any national monitoring, recording, and reporting requirements specified by the administrator in regulations pursuant to the Act.

Section 30. SAMPLING AND TESTING METHODS

(a) All sampling and testing shall be done in accordance with "Standard

Methods for the Examination of Water and Wastewater", 13th Edition,

and the results calculated in accordance with test procedures

approved by the director. All tests shall be made under the

direction of persons knowledgeable in the field of water pollution

control.

(b) The director may conduct tests of waste discharges from any

source. Upon request of the director, the person responsible

for the source to be tested shall provide necessary sampling stations

and such other safe and proper sampling and testing facilities,

exclusive of instruments and sensing devices, as may be necessary

for proper determination of the waste discharge.

Section 31. MALFUNCTION OF EQUIPMENT REPORTING

(a) In the case of shutdown of water pollution control equipment for

necessary scheduled maintenance, the intent to shut down such equip-

ment shall be reported to the director at least twenty-four (24)

hours prior to the planned shutdown. Such prior notice shall include,

but is not limited to, the following:

1) Identification of the specific facility to be taken out of service as well as its location and NPDES permit number.

2) The expected length of time that the water pollution control equipment will be out of service.

3) The nature and quantity of discharge of water pollutants likely to be emitted during the shutdown period.

4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period and the pollutional effects of the wastes to be by-passed.

5) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(b) In the event that any waste discharge, water pollution control equipment, or related facility breaks down in such a manner as to cause the discharge of water pollutants in violation of applicable rules and regulations, the person responsible for such equipment shall immediately notify the director of such failure or breakdown and provide a statement giving all pertinent facts, including the

estimated duration of the breakdown. The director shall be

notified when the condition causing the failure or breakdown has

been corrected and the equipment is again in operation.

Section 32. AGENCY BOARD MEMBERSHIP

Any board or body which approves NPDES permit applications or portions thereof shall not include as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit.

(a) For the purposes of this section, the term "board or body" includes any

individual, including the director, who has or shares authority to

approve permit applications or portions thereof either in the first

instance or on appeal.

(b) For the purposes of this section, the term "significant portion of his

income" shall mean 10 per cent of gross personal income for a calendar

year, except that it shall mean 50 per cent of gross personal income for

a calendar year if the recipient is over 60 years of age and is receiving

such portion pursuant to retirement, pension, or similar arrangement.

(c) For the purposes of this section, the term "permit holders or applicants

for a permit" shall not include any department or agency of the State.

(d) For the purposes of this section, the term "income" includes retirement benefits, consultants fees, and stock dividends.

(e) For the purposes of this section income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual-fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

Section 33. PENALTIES

Any person who violates the provisions of this Chapter shall be liable for a penalty as provided in Chapter 342, Hawaii Revised Statutes.

Section 34. HEARINGS AND APPEALS

Hearings before the director shall be held and appeals from any of his decision for any violation of these regulations shall be made in accordance with Chapters 91 and 342, Hawaii Revised Statutes.

Section 35. SEVERABILITY CLAUSE

Should any section, paragraph, sentence, clause, phrase or application of this Chapter be declared unconstitutional or invalid for any reason by competent authority, the remainder or any other application of said Chapter shall not be affected thereby.

Section 36. EFFECTIVE DATE.

This Chapter shall be effective 60 days after approval by the Governor.